

Message Text

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INFO OCT-01 EUR-12 ISO-00 SSO-00 /028 R

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APPROVED BY D:DBRIZILL
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FM SECSTATE WASHDC
TO AMEMBASSY BELGRADE IMMEDIATE

S E C R E T STATE 169883

FOR THE DEPUTY SECRETARY FROM BRIZILL

E.O. 11652: GDS

TAGS: OVIP (CHRISTOPHER, WARREN)

SUBJECT: LAW OF THE SEA CONFERENCE

1. INFORMAL COMPOSITE NEGOTIATING TEXT ISSUED BY
CONFERENCE PRESIDENT AMERASINGHE ON JULY 20. ACCORDING
TO AMBASSADOR RICHARDSON SEABED PROVISIONS ARE TOTALLY
UNACCEPTABLE. COMMITTEE I CHAIRMAN ENGO APPEARS TO HAVE
YIELDED TO RADICAL DEMANDS AND SHELVED CONCILIATORY
PROVISIONS OF REVISED EVENSEN TEXT. AMERASINGHE TEXT
DOES, HOWEVER, ACCORD HIGH SEA STATUS TO 200-MILE
OFFSHORE ECONOMIC ZONE. OTHER ASPECTS OF TEXT, INCLUDING
PROVISIONS ON MARINE POLLUTION, SCIENTIFIC RESEARCH, AND
DISPUTE SETTLEMENT, ARE SATISFACTORY AND GENERALLY MEET
OUR MINIMAL REQUIREMENT.

2. FOLLOWING ISSUANCE OF AMERASINGHE TEXT, AMBASSADOR
RICHARDSON MADE THE FOLLOWING STATEMENT, WHICH WAS
CLEARED BY THE SECRETARY.

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3. BEGIN QUOTE. THE INFORMAL NEGOTIATING TEXT
RESULTING FROM THIS SESSION OF THE UN LAW OF THE SEA
CONFERENCE EVIDENCES REAL PROGRESS ON VITAL ISSUES
RELATING TO INTERNATIONAL SECURITY AND FREEDOM OF
NAVIGATION. AT THE SAME TIME IT SUBSTANTIALLY SETS
BACK PROSPECTS FOR AGREEMENT ON AN INTERNATIONAL REGIME

FOR THE CONDUCT OF SEABED MINING. BOTH THE SUBSTANCE OF THE TEXT OF THIS ISSUE AND THE LACK OF FAIR AND OPEN PROCESSES IN ITS FINAL PREPARATION REQUIRE ME TO RECOMMEND THAT THE UNITED STATES UNDERTAKE A MOST SERIOUS AND SEARCHING REVIEW OF BOTH THE SUBSTANCE AND PROCEDURES OF THE CONFERENCE.

4. IT IS WITH A SENSE OF CONSIDERABLE FRUSTRATION THAT I MAKE THIS ACCOUNTING. FOR TRUE PROGRESS WAS MADE DURING THE PAST SESSION:

5. NEW PROVISIONS WERE NEGOTIATED TO CLARIFY THE LEGAL STATUS OF THE NEW 200 MILE ECONOMIC ZONE. THEY SEEK TO SAFEGUARD TRADITIONAL HIGH SEAS FREEDOMS WITHIN THIS ZONE EXCEPT FOR SPECIFIC RESOURCE-RELATED RIGHTS ACCORDED COASTAL STATES BY THE CONVENTION. THESE PROVISIONS ARE A MARKED IMPROVEMENT OVER PREVIOUS TEXTS AND MAY HELP PREVENT EROSION OF HIGH SEAS FREEDOMS BY COASTAL STATE ATTEMPTS TO EXTEND THEIR SOVEREIGNTY OVER OCEAN SPACE.

6. WE SUCCESSFULLY RETAINED THE GENERALLY SATISFACTORY PREVIOUS TEXTS ON PASSAGE OF STRAITS WHICH A DETERMINED MINORITY SOUGHT TO CHANGE. AT THE SAME TIME WE FOUND A WAY TO ACCOMMODATE THE REAL NEED FOR ENVIRONMENTAL PROTECTION IN STRAITS, PARTICULARLY IN
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AREAS SUCH AS THE STRAITS OF MALACCA.

7. THE PROVISIONS OF THE TEXT DEALING WITH SCIENTIFIC RESEARCH WERE IMPROVED. AN EFFORT BY SOME DELEGATIONS TO INCREASE THE DEGREE OF COASTAL STATE CONTROL OF SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE WAS DEFEATED. IN THE NEXT TEXT, THE CONDITIONS FOR CONDUCTING SCIENTIFIC RESEARCH ARE SET OUT CLEARLY, AND ARE LIKELY TO BE COPIED INTO NATIONAL LAWS, THUS REGULARIZING WHAT HAS UNTIL NOW BEEN A CAPRICIOUS SITUATION. ALSO, WE SUCCESSFULLY ELIMINATED A CLAUSE THAT COULD HAVE OBLIGED THE U.S. TO RESTRICT PUBLICATION OF SCIENTIFIC DATA AFTER THE FACT AND WITHOUT THE CONSENT OF SCIENTISTS, WHICH WAS HIGHLY OFFENSIVE TO OUR CONCEPTS OF FREE SCIENCE AND FREE SPEECH. NOW THE COASTAL STATE, IN GRANTING CONSENT, MUST INDICATE IN ADVANCE IF IT WISHES TO IMPOSE SUCH A RESTRICTION, AND IF SO THE SCIENTIST CAN DECIDE WHETHER HE WISHES TO PROCEED WITH THE PROJECT

8. WE WERE SUCCESSFUL IN ELIMINATING TEXTS THAT COULD HAVE PREVENTED US FROM IMPOSING RULES IN OUR TERRITORIAL SEA TO PREVENT POLLUTION FROM FOREIGN SHIPS. AT THE

SAME TIME, WE RETAINED OUR RIGHT TO FIX STRICT ENVIRONMENTAL CONDITIONS -- INCLUDING CONSTRUCTION, MANNING, EQUIPMENT AND DESIGN REGULATIONS -- FOR ENTRY INTO U.S. PORTS. THESE CHANGES BRING THE TEXT INTO FULL HARMONY WITH THE ADMINISTRATION'S ANTI-POLLUTION PROGRAM.

9. CONTINUED PROGRESS WAS MADE IN THE DESIGN OF A COMPREHENSIVE SYSTEM FOR PEACEFUL SETTLEMENT OF DISPUTES RELATING TO OCEAN USES.

1U. UNDER THE FAIR AND JUDICIOUS LEADERSHIP OF MINISTER JENS EVENSEN OF NORWAY A RESPONSIBLE AND EFFECTIVE DISCUSSION OF SEABED ISSUES TOOK PLACE. THIS DISCUSSION
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AND THE TEXTS FORMULATED BY MINISTER EVENSEN OFFERED REAL PROSPECT THAT THE IMPASSE ON SEABED MINING ISSUES COULD BE RESOLVED ON TERMS ACCEPTABLE TO BOTH THE DEVELOPED AND DEVELOPING NATIONS.

11. REGRETTABLY, HOWEVER, THE NEW "COMPOSITE" TEXT CONCERNING THE SYSTEM OF EXPLOITATION AND GOVERNANCE OF THE DEEP SEABED AREA (PART XI) IS NOW FUNDAMENTALLY UNACCEPTABLE. IT DEVIATES MARKEDLY FROM THE PROPOSED COMPROMISE TEXT WHICH HAD BEEN PREPARED ON THE BASIS OF FULL, FAIR AND OPEN DISCUSSION UNDER MINISTER EVENSEN'S LEADERSHIP.

12. THE EVENSEN TEXT, ALTHOUGH NOT WITHOUT PROBLEMS, WAS GENERALLY VIEWED AS A USEFUL BASIS FOR FURTHER NEGOTIATION. THE NEWER TEXT -- PRODUCED IN PRIVATE, NEVER DISCUSSED WITH A REPRESENTATIVE GROUP OF CONCERNED NATIONS, AND RELEASED ONLY AFTER THIS SESSION OF THE CONFERENCE TERMINATED -- CANNOT BE VIEWED AS A RESPONSIBLE SUBSTANTIVE CONTRIBUTION TO FURTHER NEGOTIATION. INDEED, THE MANNER OF ITS PRODUCTION -- TREATING WEEKS OF SERIOUS DEBATE AND RESPONSIBLE NEGOTIATION AS ESSENTIALLY IRRELEVANT -- RAISES AN EQUALLY SERIOUS PROCEDURAL PROBLEM: WHETHER THE LAW OF THE SEA CONFERENCE CAN BE ORGANIZED TO TREAT DEEP SEABED ISSUES WITH THE SERIOUSNESS THEY, AND THE CONFERENCE WHICH DEPENDS UPON THEIR SATISFACTORY RESOLUTION, DEMAND.

13. AMONG THE SERIOUS POINTS OF SUBSTANTIVE DIFFICULTY IN THE LATEST DEEP SEABEDS TEXT, AND THE SYSTEM IT WOULD DEFINE, ARE THE FOLLOWING:

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14. IT WOULD NOT GIVE THE REASONABLE ASSURANCE OF ACCESS THAT IS NECESSARY IF WE AND OTHERS COULD BE EXPECTED TO HELP FINANCE THE ENTERPRISE AND TO ACCEPT A "PARALLEL SYSTEM" AS A BASIS OF COMPROMISE.

15. IT COULD BE READ TO MAKE TECHNOLOGY TRANSFER BY CONTRACTORS A CONDITION OF ACCESS TO THE DEEP SEABED -- SUBJECT, AT LEAST IN PART, TO NEGOTIATION IN THE PURSUIT OF A CONTRACT.

16. IT COULD BE READ TO GIVE THE SEABED AUTHORITY THE POWER EFFECTIVELY TO MANDATE JOINT VENTURES WITH THE AUTHORITY AS A CONDITION FOR ACCESS.

17. IT FAILS TO SET CLEAR AND REASONABLE LIMITS ON THE FINANCIAL BURDENS TO BE BORNE BY CONTRACTORS; INDEED, IT SIMPLY COMBINES A WIDE RANGE OF ALTERNATIVE FINANCIAL BURDENS, AS IF SUCH A COMBINATION COULD BE A COMPROMISE -- WHEN, IN FACT, IT IS LIKELY TO PROVE A COMPOUND BURDEN SUFFICIENT TO STIFLE SEABED DEVELOPMENT.

18. IT WOULD SET AN ARTIFICIAL LIMIT ON SEABED PRODUCTION OF MINERALS FROM NODULES -- WHICH IS NOT ONLY OBJECTIONABLE IN PRINCIPLE; IT IS ALSO FAR MORE STRINGENT THAN WOULD BE NECESSARY TO PROTECT SPECIFIC DEVELOPING COUNTRY PRODUCERS FROM POSSIBLE ADVERSE EFFECTS, AND IS INCOMPATIBLE WITH THE BASIC ECONOMIC INTERESTS OF A DEVELOPING WORLD GENERALLY.

19. IT WOULD GIVE THE SEABED AUTHORITY EXTREMELY BROAD NEW, OPEN-ENDED POWER TO REGULATE ALL OTHER MINERAL PRODUCTION FROM THE SEABED "AS APPROPRIATE."

20. IT WOULD APPEAR, ARGUABLY, TO GIVE THE AUTHORITY UNACCEPTABLE NEW POWER TO REGULATE SCIENTIFIC RESEARCH IN THE AREA.

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21. IT WOULD FAIL ADEQUATELY TO PROTECT MINORITY INTERESTS IN ITS SYSTEM OF GOVERNANCE AND WOULD, ACCORDINGLY, THREATEN TO ALLOW THE ABUSE OF POWER BY AN ANOMALOUS "MAJORITY."

22. IT WOULD ALLOW THE DISTRIBUTION OF BENEFITS FROM

SEABED EXPLOITATION TO PEOPLES AND COUNTRIES NOT PARTY
TO THE CONVENTION.

23. IT WOULD SERIOUSLY PREJUDICE THE LIKELY LONG-TERM
CHARACTER OF THE INTERNATIONAL REGIME, BY REQUIRING
THAT -- IF AGREEMENT TO THE CONTRARY IS NOT REACHED
WITHIN 25 YEARS -- THE REGIME SHALL AUTOMATICALLY BE

CONVERTED INTO A "UNITARY" SYSTEM, RULING OUT DIRECT
ACCESS BY CONTRACTORS, EXCEPT TO THE EXTENT THAT THE
AUTHORITY MIGHT SEEK THEIR PARTICIPATION IN JOINT
VENTURES WITH IT.

24. WITH THIS UNFORTUNATE, LAST-MINUTE DEVIATION FROM
WHAT HAD SEEMED TO BE AN EMERGING DIRECTION OF PROMISE
IN THE DEEP SEABED NEGOTIATIONS, I AM LED NOW TO
RECOMMEND TO THE PRESIDENT OF THE UNITED STATES THAT OUR
GOVERNMENT MUST REVIEW NOT ONLY THE BALANCE AMONG OUR
SUBSTANTIVE INTERESTS, BUT ALSO WHETHER AN AGREEMENT
ACCEPTABLE TO ALL GOVERNMENTS CAN BEST BE ACHIEVED
THROUGH THE KIND OF NEGOTIATIONS WHICH HAVE THUS FAR
TAKEN PLACE. END QUOTE. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Sent Date: 20-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE169883
Document Source: CORE
Document Unique ID: 00
Drafter: DBRIZILL
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770258-0658
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770736/aaaabfcn.tel
Line Count: 246
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 9cfa6d66-c288-dd11-92da-001cc4696bcc
Office: ORIGIN SS
Original Classification: SECRET
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: SECRET
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1798873
Secure: OPEN
Status: NATIVE
Subject: LAW OF THE SEA CONFERENCE
TAGS: OVIP, (CHRISTOPHER, WARREN)
To: BELGRADE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/9cfa6d66-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009